

134 FERC ¶ 61,035
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Central New York Oil and Gas Company, LLC

Docket No. CP10-194-000

ORDER ISSUING CERTIFICATE

(Issued January 20, 2011)

1. On April 27, 2010, and supplemented on May 14, 2010 and June 15, 2010, Central New York Oil and Gas Company, LLC (Central NY) filed an application under section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations,² requesting a certificate of public convenience and necessity authorizing Central NY to construct and operate additional compression and appurtenant facilities to increase the throughput capacity of its Stagecoach Storage Facility in Tioga County, New York, and Bradford County, Pennsylvania, in order to provide a new firm wheeling service. Central NY also seeks authorization to establish initial cost-based recourse rates for the proposed firm wheeling service.

2. As discussed below, the Commission grants Central NY's requested certificate authorizations and approves the establishment of initial recourse rates for firm wheeling service, subject to the conditions described herein.

I. Background

3. Central NY is a New York limited liability company³ and operates the existing Stagecoach Storage Facility, a multi-cycle natural gas storage facility at the Stagecoach Gas Field in Tioga County, New York and Bradford County, Pennsylvania, located about

¹ 15 U.S.C. § 717f(c) (2006).

² 18 C.F.R. Part 157, Subpart A (2010).

³ Central New York is an indirect, wholly-owned subsidiary of Inergy, L.P.

150 miles west of New York City. Central NY is subject to the Commission's jurisdiction as a "natural gas company" within the meaning of NGA section 2(6).⁴

4. The Commission authorized the initial Stagecoach Storage Facility in February 2001⁵ and an expansion of the project facilities in September 2006.⁶ The facility currently is designed to provide approximately 26.25 Bcf of working storage capacity in six depleted gas reservoirs, with maximum injection and withdrawal rates of 250,000 Mcf/day and 500,000 Mcf/day, respectively. The facility includes two header pipelines: (1) a 23.7-mile, 30-inch diameter pipeline that connects the storage facility with Tennessee Gas Pipeline Company's (Tennessee Gas) Line 300 in Bradford County, Pennsylvania (South Lateral⁷); and (2) a 9.3-mile, 20-inch diameter pipeline that connects the storage facility with Millennium Pipeline Company, LLC's (Millennium Pipeline) pipeline in Tioga County, New York (North Lateral). Central NY is currently authorized to provide firm and interruptible storage service, and interruptible wheeling service⁸ at market-based rates.

II. Proposal

5. Central NY proposes to add compression to increase the capacity on the South and North Laterals. This will enable Central NY to permit contracted shippers to wheel gas bi-directionally from Millennium Pipeline to Tennessee Gas, or from points along the laterals to either Millennium Pipeline or Tennessee Gas, on a firm basis, independent of any storage service provided by Central NY at the Stagecoach Storage Facility.

A. New Facilities

6. Central NY proposes to install a single 13,400 hp high-speed electric motor driving a Solar C40 centrifugal compressor near the interconnect between the North Lateral and Millennium Pipeline in Tioga, New York. This North Station compressor site will also include a non-jurisdictional, 15,050-foot-long 115 kV to 13.2 kV electric line, an electric substation, and appurtenant facilities to be constructed and operated by the New York State Electric and Gas Company. At the second compressor station site, South Station in Bradford County, Pennsylvania, Central NY proposes to install a single

⁴ 15 U.S.C. § 717a(6) (2006).

⁵ See *Central New York Gas & Oil Co., LLC*, 94 FERC ¶ 61,194 (2001).

⁶ See *Central New York Gas & Oil Co., LLC*, 116 FERC ¶ 61,277 (2006) (*Central NY*).

⁷ See *Tennessee Gas Pipeline Co.*, 117 FERC ¶ 62,261 (2006).

⁸ Central NY's tariff defines the term "wheeling service" to mean interruptible transportation across Central NY's facilities provided under Rate Schedule IWS.

15,300 hp high-speed electric motor driving a Solar C45 centrifugal compressor near the interconnect between Tennessee Gas and the South Lateral. First Energy will operate a non-jurisdictional, 1,689-foot-long 115 kV or 230 kV electric line to provide power to the South Station.

7. Central NY states that the additional compression will supplement the approximately 36,900 hp of compression currently at the Stagecoach Storage Facility and increase the maximum throughput capacity of the North and South Laterals to approximately 560 MMcf/day (from 500 MMcf/day) and 728 MMcf/day (from 500 MMcf/day), respectively. This will enable Central NY to provide up to 325 MMcf/day of firm wheeling capacity between receipt and delivery points at the existing interconnects with Millennium Pipeline and Tennessee Gas. Central NY states that the proposed compression will not affect the existing injection and withdrawal capability of the Stagecoach Storage Facility.

8. The proposed facilities also include additional metering facilities at the interconnects with Millennium and Tennessee Gas. Central NY states that it may also make revisions to surface piping and flow control mechanisms at the existing Stagecoach Storage Facility's compression station.

B. Open Season

9. Central NY conducted a non-binding open season for firm wheeling service from July 24, 2009 to March 5, 2010, and a binding open season from March 5 to March 11, 2010. Central NY states that it entered into precedent agreements with two unaffiliated shippers for a total of 225 MMcf/day of firm wheeling capacity in February 2010 and with three shippers for an additional 100 MMcf/day of firm wheeling capacity during the binding open season, bringing the total subscribed capacity to 325 MMcf/day.⁹

10. Central NY also states that it contacted its existing firm storage service customers during the non-binding and binding open seasons to offer them the opportunity to increase their firm capacity on the North and South Laterals. None of the existing customers requested to reserve additional capacity.

C. Proposed Firm Wheeling Service

11. Central NY proposes to offer a new firm wheeling service (Rate Schedule FWS) on an open-access, non-discriminatory basis under Part 284 of the Commission's

⁹ Exhibit I of the Application contains a copy of each of the executed precedent agreements. Central NY requests confidential treatment of the precedent agreements contained in Exhibit I pursuant to section 388.112 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 388.112 (2010).

regulations.¹⁰ Central NY states that the proposed new wheeling service will utilize capacity on the existing North and South Laterals that is currently not subscribed by storage shippers,¹¹ in addition to the capacity on the laterals created by the compression facilities proposed herein. Central NY proposes to establish initial cost-based recourse rates for its proposed firm wheeling service. In addition, Central NY requests authority to enter into negotiated rate agreements under Rate Schedule FWS for the proposed firm wheeling service.¹²

12. Central NY states that the firm wheeling service will provide customers with flexible, bi-directional, primary firm capacity rights on both laterals without any requirement to allocate the customers' maximum daily firm wheeling quantity to designated primary receipt and delivery points. According to Central NY, customers could nominate their full maximum daily firm wheeling quantity to any combination of receipt points and delivery points on any path, including segmented non-overlapping paths. Thus, Central NY states that customers will have primary firm scheduling rights for each such set of nominated points up to the customers' maximum daily firm wheeling quantity for each path.

III. Notice and Interventions

13. Public notice of Central NY's application was published in the *Federal Register* on May 14, 2010 (75 Fed. Reg. 27,339). Millennium Pipeline, Chesapeake Energy Marketing, Inc., National Fuel Gas Distribution Corporation, Anadarko Energy Services Company, and Consolidated Edison Company of New York, Inc. (ConEd) filed timely, unopposed motions to intervene.¹³ No protests were filed.

14. ConEd, a current Central NY customer, requests that the Commission clarify section 7.6 of the proposed General Terms and Conditions (GT&C) in Central NY's tariff, which provides that Central NY may waive compliance with its gas quality specifications under certain circumstances. ConEd maintains that Central NY should not be permitted to waive its gas quality specifications if it would result in gas deliveries being rejected by a downstream pipeline that is directly connected to Central NY's gas

¹⁰ *Id.* Part 284.

¹¹ According to Central NY, Central NY's existing customers subscribe approximately 403 MMcf/day on the South Lateral and 235 MMcf/day on the North Lateral.

¹² Central NY states all of its firm wheeling service capacity will initially be contracted pursuant to negotiated rates.

¹³ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214 (2010).

distribution system. ConEd's requested clarification is discussed below in the tariff section.

15. Anadarko Energy Services Company, a current shipper on the North and South Laterals, filed comments in support of Central NY's application stating that it will help develop infrastructure and service in the northeast for natural gas from the Marcellus Shale region. Similarly, Chesapeake Energy Marketing, Inc., a shipper that has contracted with Central NY for firm wheeling service, also filed comments in support of the application claiming there is an immediate need for wheeling capacity to enable increasing volumes of Marcellus Shale gas to reach markets.

IV. Discussion

16. Since the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹⁴

A. Application of the Certificate Policy Statement

17. On September 15, 1999, the Commission issued a policy statement to provide guidance as to how the Commission evaluates proposals for certificating new construction.¹⁵ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, possibility of overbuilding, subsidization by existing customers, applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.¹⁶

18. Under this policy, the threshold requirement in establishing the public convenience and necessity for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from

¹⁴ 15 U.S.C. §§ 717f(c) and 717f(e) (2006).

¹⁵ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999) (Certificate Policy Statement), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000).

¹⁶ *See* Certificate Policy Statement, *supra* note 15, at 61,737.

existing customers.¹⁷ The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effect the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline.¹⁸ If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

19. Central NY's proposal satisfies the threshold requirement that the applicant must be prepared to financially support the project without relying on subsidization from its existing customers because Central NY's proposed recourse rate for firm wheeling service is an incremental, stand-alone rate, based on the costs associated with providing the wheeling service. Thus, there is no risk of subsidization by existing customers.

20. Furthermore, the proposed project would not adversely impact Central NY's existing customers or existing pipelines in the region. The project will increase compression and flexibility on the Central NY's system and will also enhance market-access options available to pipelines and their customers in the area.

21. In addition, we also find that the proposed facilities have been designed to minimize the impact on landowners. The new facilities will be constructed near existing metering, compression, and pipeline facilities. Furthermore, Central NY has acquired, or is currently acquiring, the rights to the land to be utilized for the operation of the compressor stations.

22. On balance, the economic benefits of Central NY's proposal outweigh any potential adverse impacts on the interests discussed. Based on this finding and our environmental analysis and conditions discussed below, we find certification of the project under section 7 of the NGA is required by the public convenience and necessity.

B. Rate and Tariff Issues

1. Rate for Firm Wheeling Service

23. Central NY proposes to offer cost-based firm wheeling service under Rate Schedule FWS on a non-discriminatory basis under Part 284 of the Commission's

¹⁷ See *id.* at 61,745-46.

¹⁸ See *id.*

regulations. Central NY proposes a postage stamp rate¹⁹ which it states was developed consistent with the Commission's policy related to the straight fixed-variable rate design.

24. Because of the integrated nature of Central NY's system, Central NY explains that it first calculated a total overall cost-of-service based on the costs of the existing facilities²⁰ and of the new facilities. Next, Central NY allocated a percentage of its total overall cost-of-service to the proposed firm wheeling service based on the percentage of the contract demand represented by the firm wheeling service shippers (325,000 Dth/day of capacity) to the total contract demand on the laterals. Central NY states that storage shippers currently have contracted for 403,000 Dth/day of capacity on the South Lateral, and 235,000 Dth/day of capacity on the North Lateral, for withdrawals. For purposes of allocating a portion of the total costs to the firm wheeling service, Central NY assumed that the existing contracted capacity associated with storage shippers' service on both the North and South Laterals was 403,000 Dth/day. Based on this figure, Central NY allocated approximately 45 percent of the total costs to the firm wheeling service (325,000 Dth/day divided by 728,000 Dth/day (i.e., 325,000 Dth/day plus 403,000 Dth/day)). In addition, a cost-of-service credit of 5 percent (\$934,000) was applied to reflect interruptible wheeling service revenue.

25. The proposed firm wheeling service reservation rate is derived using a \$41,823,000 first-year cost of service,²¹ of which \$17,737,000 is allocated to firm wheeling service, and annual firm wheeling service reservation billing determinants of 162,117,730 Dth, based on Central NY's maximum daily design capacity. The primary assumptions reflected in the calculation of the cost of service include: (1) total plant based on the book value of the existing facilities as of October 1, 2011, plus the estimated cost of the new facilities as of October 1, 2011; (2) book depreciation estimated on a 25-

¹⁹ Central NY states that a system-wide postage stamp rate design is appropriate because all the firm wheeling service shippers will have capacity rights on both the North and South Laterals and the entire length of its pipeline system is relatively short (i.e., less than 35 miles).

²⁰ The cost of the existing facilities utilized in this calculation excluded all costs that are strictly and only related to the provision of Stagecoach's storage services and that would not otherwise be associated with facilities used in the integrated system to provide firm wheeling service (e.g., storage wells, storage royalty payments).

²¹ See Revised Exhibit N of the Application (filed on June 15, 2010). Central NY's proposed cost of service consists of \$7,583,000 of operation and maintenance expenses, \$8,923,000 of depreciation, \$17,778,000 of return allowance (at 13.5 percent rate of return on equity based on a capital structure of 55 percent equity and 45 percent debt, and 8.0 percent cost of debt), \$5,853,000 of income taxes and \$1,685,000 of taxes other than income taxes for a total cost of service of \$41,823,000.

year straight-line basis, consistent with the depreciation rate currently used by Central NY for its existing facilities; and (3) an overall rate of return of 11.03 percent. The proposed maximum cost-based firm wheeling service monthly reservation rate is \$4.5026 per Dth. Central NY estimates \$100,000 of variable costs resulting in a proposed maximum firm wheeling service commodity rate of \$0.0017 per Dth and maximum firm wheeling service overrun rate of \$0.1497 per Dth. Central NY also proposes to charge 0.10 percent for lost and unaccounted-for fuel, as well as a \$0.0438/Dth recourse electric power cost charge to recover the electricity costs associated with the electric compressors used to provide firm wheeling service.

26. The Commission has reviewed initial firm recourse rates and generally finds Central NY's rate proposals reasonable, subject to the modifications and conditions discussed below.

2. Rate for Interruptible Wheeling Service

27. Central NY currently has authority to charge market-based rates for its existing storage services and its existing interruptible wheeling service under Rate Schedule IWS.²² However, our authorization of those market-based rates was based on a market power study submitted by Central NY in 2006 that did not factor in the changed circumstances resulting from the increase in capacity on the South and North Laterals proposed in the subject application. If Central NY proposes to continue to provide interruptible wheeling service at market-based rates, it must submit an updated market power study within sixty days of the date of this order. Alternatively, Central NY can elect to establish cost-based rates for interruptible wheeling service when it files actual tariff sheets consistent with this order. In either case, Central NY is directed to provide a thorough and detailed explanation of its rationale and the manner in which interruptible wheeling service will be provided for relative to firm wheeling service.

3. Allowance for Funds Used During Construction

28. Central NY proposes to capitalize a total allowance for funds used during construction (AFUDC) of \$2,929,419 as part of the cost of its proposed project. Central NY represents that it commenced AFUDC in February 2010 and that its accrual of AFUDC satisfies the two conditions of the Commission's revised AFUDC policy.²³ Central NY indicates that it has spent approximately \$1.6 million on numerous activities necessary for preparing to construct the project, including the purchasing of land and right-of-way agreements, executing power line contracts, purchasing materials for the

²² See *Central NY*, 116 FERC ¶ 61,277 at Ordering Paragraph (C).

²³ See Central NY's Data Response filed on July 30, 2010.

compressor stations, and performing various engineering, environmental and archeological activities.

29. The Commission revised its policy on the commencement of AFUDC in *Florida Gas Transmission Company LLC* and *Southern Natural Gas Company*,²⁴ to allow natural gas pipelines to begin accruing AFUDC when the following conditions are met: (1) capital expenditures for the project have been incurred; and (2) activities that are necessary to get the construction project ready for its intended use are in progress. Based on Central NY's representations, its accrual of AFUDC for installation of additional compression on the North and South Laterals of the Stagecoach Storage Facility appear to be consistent with the revised policy conditions.

4. Rate Changes and Three-Year Filing Requirements

30. If Central NY desires to make any rate changes not specifically authorized by this order prior to placing its facilities into service, it must file an amendment to its application under NGA section 7(c). In that filing, Central NY will need to provide cost data and the required exhibits supporting any revised rates. After the facilities are constructed and placed in service, Central NY must make a NGA section 4²⁵ filing to change its rates to reflect any revised construction and operating costs.

31. Because the Commission has not previously approved the major cost components reflected in Central NY's proposed cost-based rates, we will require Central NY to file a cost and revenue study at the end of its first three years of actual operation to justify its existing approved cost-based recourse rates.²⁶ In its filing, the projected units of service should be no lower than those upon which Central NY's approved initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the Commission's regulations to update cost-of-service data.²⁷ After reviewing the data, the Commission will determine whether to exercise our authority under NGA section 5²⁸ to establish just and reasonable rates. In the alternative, in lieu of this filing, Central NY may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date of its proposed facilities.

²⁴ 130 FERC ¶ 61,194 (2010); 130 FERC ¶ 61,193 (2010).

²⁵ 16 U.S.C. § 717c (2006).

²⁶ See, e.g., *MarkWest Pioneer, L.L.C.*, 125 FERC ¶ 61,165 (2008); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089 (2008).

²⁷ See 18 C.F.R. § 154.313 (2010).

²⁸ 16 U.S.C. § 717d (2006).

5. Negotiated Rate Authority

32. Under the Commission's Alternative Ratemaking Policy Statement, the Commission permits a pipeline to negotiate rates with a shipper that differ from the otherwise applicable recourse rates, as long as the shipper has the ability to opt for the use of the recourse rate and complies with other conditions.²⁹ In its application, Central NY requests negotiated rate authority for the proposed firm wheeling service.

33. The Commission will permit Central NY to negotiate rates with shippers for firm wheeling service conditioned on Central NY including a provision in its GT&C that sets forth the general policies applicable to negotiated rate agreements including the following requirements.³⁰ The Commission's general practice is not to approve negotiated rates/non-conforming service agreements in a certificate order. Instead, Central NY must file either its negotiated rate contracts or, if the negotiated rate agreements do not deviate from Central NY's pro forma service agreement, numbered tariff records, at least thirty but not more than sixty days prior to the commencement of service consistent with the pipeline's tariff, the Commission's Alternative Ratemaking Policy Statement and the Commission's decision in *NorAm Gas Transmission Company*.³¹ Tariff records filed in compliance with this requirement must reflect the terms of the negotiated rate agreement, together with a statement that the agreement conforms in all material respects with the pipeline's pro forma service agreement. Central NY is reminded that the tariff sheet summaries must fully describe the essential elements of the transaction, including the name of the shipper, the negotiated rate, the type of service, the receipt and delivery points applicable to the service and the volume of gas to be transported. Also, where the price term of the negotiated rate agreement is a formula, the formula should be fully set forth in the tariff record. Central NY is also reminded that, in order to file a tariff sheet summary, it must certify that the agreement contains no deviation from the form of service agreement that goes beyond filling in the blank spaces or that affects the substantive rights of the parties in any way.³²

²⁹ See *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, at 61,241 (1996) (Alternative Ratemaking Policy Statement).

³⁰ See, e.g., *Texas Eastern Transmission, LP*, 133 FERC ¶ 61,220 (2010).

³¹ 77 FERC ¶ 61,011 (1996).

³² See *Natural Gas Pipelines Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, at P 33 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

34. Should the negotiated rate agreement contain non-conforming provisions, Central NY must clearly delineate differences between its negotiated contractual terms and that of its form of service agreement in redline and strikeout. In addition, Central NY must provide a detailed narrative outlining the terms of its negotiated contract, the manner in which such terms differ from its form of service agreement, the effect of such terms on the rights of the parties, and why such deviation does not present a risk of undue discrimination.³³

35. Central NY is required to maintain separate and identifiable accounts for any volumes transported, billing determinants, rate components, surcharges, and revenues associated with its negotiated rates for the project in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate proceedings. When Central NY files its negotiated rate agreement or tariff record under section 4 of the NGA, interested parties may protest if they believe the rates are discriminatory.

6. Pro Forma Tariff

36. In Exhibit P of its application, Central NY submitted a pro forma tariff that revises its current tariff in order to implement its proposed firm wheeling service under Rate Schedule FWS. Central NY also states that it has made numerous other conforming changes to its tariff. One significant change is the relocation of Central NY's capacity release procedure from the Rate Schedule FSS to its GT&C, so that it will apply equally to all applicable rate schedules. We find that Central NY's pro forma tariff generally complies with Part 284 of the Commission regulations and current Commission policy subject to the clarification and revision described below. The Commission will require Central NY to file actual tariff sheets consistent with the directives in this order at least thirty days and no more than sixty days prior to the commencement of service.

37. Con Edison expressed concern with proposed section 7.6 of the GT&C, which states:

Seller may waive noncompliance with the quality specifications set forth in this Section 7 if Seller determines that noncompliance with the quality specifications set forth in this Section 7 *will not* damage Seller's facilities or *adversely affect Seller's ability to provide any service to any Customer under this Tariff*.³⁴

³³ See *Natural Gas Pipelines Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 at P 33.

³⁴ See Sheet No. 93A (emphasis added in ConEd's filing).

38. Particularly, Con Edison states it must be able to withdraw gas from storage under its contract for firm storage services at Central NY's Stagecoach Storage Facility to meet its peak day design. Thus, ConEd maintains that gas quality waivers should not be approved if they would result in gas being rejected by Central NY's downstream connections.

39. Con Edison states that Central NY has confirmed that the phrase "adversely affect Seller's ability to provide any service to any Customer under this Tariff" includes situations in which a quality specifications waiver would result in Central NY gas deliveries being rejected by a downstream pipeline that is directly connected to Central NY. Con Edison therefore requests the Commission make reference to this clarification in any order approving Central NY's application in this docket.

40. We note this clarification and, accordingly, concur with Central NY's confirmation to Con Edison that the phrase "adversely affect Seller's ability to provide any service to any Customer under this Tariff" includes situations in which a quality specifications waiver would result in Central NY gas deliveries being rejected by a downstream pipeline that is directly connected to Central NY. In addition, Central NY is directed to revise proposed section 7.6 to state that the waiver will be accorded on a non-discriminatory basis.

C. Environmental Analysis

41. On June 24, 2010, the Commission issued *Notice of Intent to Prepare an Environmental Assessment for the Proposed North-South Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting and Onsite Environmental Reviews* (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. We received written comments in response to the NOI from three interested individuals and the New York Field Office of the U.S. Fish and Wildlife Service.

42. On July 14 and 15, 2010, Commission staff conducted onsite reviews of the proposed compressor station sites that were attended by several nearby landowners and interested stakeholders. Commission staff also conducted a public scoping meeting in Owego, New York on July 15, 2010. Three individuals provided oral comments at the public scoping meeting. In the scoping comments, the primary concerns raised were related to stormwater runoff, restoration, visual resources, air quality, and noise.

43. To satisfy the requirements of the National Environmental Policy Act of 1969,³⁵ our staff prepared an environmental assessment (EA) for the proposed project. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. All substantive scoping comments received in response to the NOI were addressed in the EA.

44. The Fish and Wildlife's scoping comment was procedural, providing instructions for completing informal consultation using its website. The EA states that this process had been completed by Central NY and Commission staff concluded that no federally listed species would be affected by the project.

45. Two landowners near the North Station compressor site expressed concern with potential stormwater runoff and hazardous spills reaching the bottom of the hill below the proposed compressor station site. As stated in the EA, the North Station would sit on a relatively flat surface atop a hill. To minimize the effects of stormwater runoff, Central NY would implement its Erosion and Sedimentation Control (ESC) Plan, which includes measures such as installing temporary erosion control devices (ECD) during construction and permanent ECDs after construction is complete. These ECDs may include sediment barriers such as silt fencing or staked straw or hay bales, as specified in sections IV and IX of the ESC Plan. The EA found that Central NY's ESC Plan includes sufficient measures to prevent sedimentation on the site. In addition, Central NY would be required to obtain a stormwater permit with Tioga County to ensure that stormwater runoff would be handled properly. The EA further states that Central NY would implement its Spill Prevention, Control, and Countermeasure (SPCC) Plan during construction of the project to prevent or properly handle hazardous spills. The SPCC Plan, as outlined in section IV of the ESC Plan, includes measures such as ensuring that all employees handling fuels and other hazardous materials are properly trained, all construction crews have sufficient materials/tools to stop leaks, and Central NY and contractors follow federal, state, and local agency requirements for cleaning up a spill. Commission staff reviewed the SPCC Plan and found it acceptable.

46. In response to a scoping comment regarding the potential for inadequate restoration at the North Station site, the EA states that Central NY's ESC Plan includes post-construction monitoring and mitigation measures, such as installing permanent erosion and sedimentation control devices where required; seeding temporary disturbed areas; and conducting follow-up inspections of all disturbed areas after first and second growing seasons to determine the success of revegetation. The EA concludes that

³⁵ 42 U.S.C. §§ 4321 and 4331-4335 (2006).

adherence to Central NY's ESC Plan would ensure adequate revegetation at all construction locations.

47. One landowner filed a general scoping comment regarding the use of lighting at the South Station compressor site. In addition, landowners that participated in the South Station onsite review expressed visual resource concerns with lights illuminating the nighttime sky near their homes. The EA states that Central NY proposes to only use outside lighting during emergency or extraordinary situations. The EA also states that vegetative screening around the compressor station would lessen the visibility of the light at nearby residences.

48. Several general scoping comments were received during the scoping meeting and onsite reviews regarding potential operational impacts on air quality during operation of the project facilities. One commenter requested that independent air monitoring systems be established and its data be made publicly available. The EA states that the use of electric-driven compressor units would result in minor air emissions, as demonstrated in table 4 of the EA. The EA also states that the Environmental Protection Agency (EPA) established the Ambient Air Monitoring Program, under the authority of the Clean Air Act,³⁶ which includes the State and Local Air Monitoring Systems (SLAMS). The Ambient Air Monitoring Program requires the collection of air quality samples for the purpose of judging compliance with or progress toward meeting ambient air quality standards, activating emergency control procedures that prevent or alleviate pollution episodes, and observing pollution trends. In addition, monitoring networks are designed to determine the general background concentration levels, the impact on ambient pollution levels of significant sources or source categories, representative concentrations in areas of high population density, and highest concentrations expected to occur in the area covered by the network. SLAMS are implemented at the state and local level.

49. In addition, the New York State Department of Environmental Conservation maintains over eighty air monitoring stations as part of its SLAMS and publishes the data on its website. The monitoring station closest to the North Station compressor site is in Elmira, New York, approximately thirty miles away. Similarly, the Pennsylvania Department of Environmental Protection maintains monitoring stations and publishes the data on its website. The closest monitoring station in Tioga County, Pennsylvania to the South Station compressor site is approximately forty miles away. The EA finds that the existing regulations and use of the monitoring stations adequately address the air quality concerns.

50. General comments regarding noise from the two new compressor stations were received from interested parties that attended the scoping meeting and from landowners

³⁶ 42 U.S.C. §§ 7401-7661 (2006).

in Bradford County, Pennsylvania during the July 14, 2010 onsite environmental review. Central NY would implement noise mitigation measures, such as installing the compressors in acoustically-insulated buildings and utilizing low-noise coolers. The EA states that the noise attributable to each compressor station is predicted to be below 55 decibels at the nearest noise-sensitive areas, which complies with Commission noise requirements³⁷ and local ordinances. In order to verify predicted noise levels from the North Station and South Station, this order requires Central NY to file noise surveys after placing the compressor stations in service (environmental condition 11). This will ensure that there is no significant impact on the noise environment in the project area.

51. The EA was issued for a thirty-day comment period and placed into the public record on September 27, 2010. We received a comment letter from the New York State Department of Agriculture and Markets (Department) regarding Central NY's proposed access road and the electrical powerline required for the North Station. The Department recommended that Central NY improve the existing access road leading to the proposed North Station site with select fill over geotextile fabric to accommodate construction traffic and install and/or improve drainage structures along the access road. The access road that would be used for the North Station is an existing graveled road currently used to access Central NY's North Lateral Meter Station. Central NY has not proposed any modifications to this road, but would extend it into the North Station site. Commission staff did not observe drainage problems near the access road that would require modification. We do, however, encourage Central NY to work with the Department to determine adequate improvements or mitigation measures to ensure the protection of soils present along and adjacent to the road.

52. The Department also expressed concern with the planned construction of a 15,000-foot-long powerline to provide electric power to the North Station, which would cross active agricultural lands within Tioga County Agricultural Districts 1 and 2. The Department indicated that a site-specific determination must be made as required by New York's State Environmental Quality Review Act. The planned powerline will be constructed by New York State Electric and Gas Company (NYSEG) and will be regulated by the New York State Department of Public Service (NYSDPS). While the EA addressed the agricultural impacts of the planned powerline in section B.9, this facility is not a Commission-jurisdictional facility. Prior to any construction and operation of this non-jurisdictional facility, the NYSDPS will need to address compliance with the regulatory requirements contained in New York's State Environmental Review Act and NYSEG will be required to obtain all necessary permits. The NYDAM's agricultural concerns with the planned powerline should be raised in the state permitting process.

³⁷ See 18 C.F.R. §§ 157.206(b)(5) and 380.12(k) (2010).

53. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with Central NY's application and supplements, and in compliance with the environmental conditions in the appendix to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

54. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.³⁸

V. Conclusion

55. For the reasons set forth herein, and subject to the conditions set forth below, we find that granting authorization under section 7(c) of the NGA for Central NY's proposal is required by the public convenience and necessity. Thus, we grant the requested authorizations to Central NY.

56. At a hearing held on January 20, 2011, the Commission, on its own motion, received and made part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Central NY under NGA section 7(c), authorizing the construction and operation of natural gas facilities as described in this order and in the application.

(B) The authorization in Ordering Paragraph (A) is conditioned on Central NY:

- (1) complying with the conditions set forth in the appendix to this order and all regulations under the NGA, but not limited to Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

³⁸ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); *Iroquois Gas Transmission System*, 59 FERC ¶ 61,094 (1992), *Iroquois Gas Transmission System*, 52 FERC ¶ 61,091 (1990).

- (2) constructing and making available for service the facilities described herein, within two years in accordance with section 157.20(b) of the Commission's regulations;
- (3) executing firm contracts for the capacity levels and terms of service represented in signed precedent agreements, prior to commencing construction.

(C) Central NY's initial recourse rates for firm wheeling service are approved, as conditioned and modified in the body of this order.

(D) Central NY must file an updated market power study within sixty days of the date of this order in order to justify charging market-based rates for interruptible wheeling service. Alternatively, Central NY can elect to establish cost-based rates for interruptible wheeling service when it files actual tariff sheets consistent with this order.

(E) Central NY must file actual tariff sheets that comply with the requirements contained in the body of this order no less than thirty days and no more than sixty days prior to the commencement of interstate service on the proposed facilities.

(F) Central NY must file either its negotiated rate agreements or tariff records describing the transaction no less than thirty days and no more than sixty days prior to the commencement of interstate service on the proposed facilities.

(G) Within three years after its in-service date, as discussed in this order, Central NY must make a filing to justify its cost-based firm wheeling service recourse rate. In the alternative, in lieu of such filing, Central NY may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

(H) Central NY and its representations made with respect to AFUDC accruals are subject to audit to determine whether they are in compliance with revised policy and related Commission rules and regulations.

(I) Central NY shall notify the Commission's environmental staff by telephone, email, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies

Central NY. Central NY shall file written confirmation of such notification with the Secretary of the Commission within twenty-four hours.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX

As recommended in the Environmental Assessment (EA), this authorization includes the following conditions:

1. Central NY shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the order. Central NY must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Central NY shall file with the Secretary an affirmative statement, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Central NY shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the order. All requests for modifications of environmental conditions of the order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Central NY's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the order must be consistent with these authorized facilities and locations. Central NY's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Central NY shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area**.

This requirement does not apply to extra workspace allowed by the Central NY Erosion and Sedimentation Control Plan, minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- (i) implementation of cultural resources mitigation measures;
 - (ii) implementation of endangered, threatened, or special concern species mitigation measures;
 - (iii) recommendations by state regulatory authorities; and
 - (iv) agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within sixty days of the acceptance of the certificate and before construction begins**, Central NY shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Central NY must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Central NY will implement the construction procedures and mitigation measures described in its application and supplements (including responses

- b. to staff data requests), identified in the EA, and required by the order;
 - b. how Central NY will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Central NY will give to all personnel involved with construction and restoration (initial and the refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Central NY's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Central NY will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (i) the completion of all required surveys and reports;
 - (ii) the environmental compliance training of onsite personnel;
 - (iii) the start of construction; and
 - (iv) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Central NY shall file updated status reports with the Secretary on a **monthly** basis **until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Central NY's efforts to obtain the necessary federal authorizations;
 - b. the current construction status of the project, and work planned for the following reporting period;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;

- f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Central NY from other federal, state, or local permitting agencies concerning instances of noncompliance, and Central NY's response.
- 8. **Prior to receiving written authorization from the Director of OEP to commence construction of project facilities in each state**, Central NY shall file with the Secretary documentation that it has received all authorizations required under federal law (or evidence of waiver thereof) in each respective state.
- 9. Central NY must receive written authorization from the Director of OEP **before placing the project facilities into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the areas affected by the project are proceeding satisfactorily.
- 10. **Within thirty days of placing the authorized facilities in service**, Central NY shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions Central NY has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
- 11. Central NY shall file noise surveys with the Secretary **no later than sixty days** after placing the North Station and South Station Compressor Stations into service. If the noise attributable to the operation of all of the equipment at the North Station and South Station Compressor Stations at full load exceeds a day-night level of 55 decibels on the A-weighted scale at any nearby noise-sensitive areas, Central NY shall install additional noise controls to meet the level **within one year** of the in-service date. Central NY shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than sixty days** after it installs the additional noise controls.